

**State Allocation Board Implementation Committee  
February 7, 2003**

**Critically Overcrowded School Facilities**

PURPOSE OF REPORT

This issue paper is in response to certain district concerns that were never finalized. To that end it discusses options and regulation modifications for the Critically Overcrowded School Facilities (COS) program regarding the following issues:

- **Preliminary Apportionment Eligibility Criteria - Changes to COS application filing criteria for projects with prior apportionments**
- **Preliminary Apportionment Fund Releases - Early release of COS reservations**
- **Conversion of Preliminary Apportionment - Preliminary to Final Apportionment eligibility re-justification**

**1. Preliminary Apportionment Eligibility Criteria  
(Regulation Sections 1859.142 and 1859.145):**

BACKGROUND

The Board's emergency regulations allow districts to apply for a preliminary apportionment for a project if all of the following criteria are met:

- (a) The district has demonstrated that it has School Facility Program (SFP) new construction.
- (b) The project for which the district is requesting funding has not received an apportionment under the Lease-Purchase Program (LPP), the SFP or other Proposition 1A funds.
- (c) At least 75 percent of the number of pupils requested on the *Application for Preliminary Apportionment* (Form SAB 50-08) are Qualifying Pupils from a Source School(s) as determined in Section 1859.143
- (d) The General Location of a proposed school meets the criteria of Education Code 17078.22(a)(3) or (b).

ISSUE

Current COS regulations preclude districts that have previously received a design or site acquisition apportionment from applying in the COS program. Certain districts request that the criteria for filing a COS preliminary application allow for projects that have previously received apportionments, other than construction, to file for the COS program.

The Office of Public School Construction (OPSC) has the following concerns with these types of projects:

- There are currently 412 projects with design and separate site acquisition apportionments; allowing these projects to apply under the COS represents a potentially significant increase in the number of potential COS projects that could strain the available COS funds.

- The circumvention of substantial progress timelines for design and site acquisition apportionments made under other programs, specifically for projects which have received a separate site acquisition apportionment.
- Projects that have already received site acquisition apportionments are considered to be very close to submittal of a construction funding application, typically within 12 to 18 months; and therefore not viable candidates for the COS program.

An option that could be considered, other than the current regulation process is to allow districts with design apportioned projects to file under the COS program. The OPSC staff believes it is appropriate to allow districts with previous design apportionments to apply for the COS program. The rationale is that districts may have made different SFP program decisions had the COS program been authorized in law and available.

## RECOMMENDATIONS

1. Allow districts with previous design apportionments approved prior to April 29, 2002 to concurrently apply for the COS program by modifying Regulation Section 1859.142 to permit districts with projects that have received a design apportionment prior to April 29, 2002, to apply for a COS Preliminary Apportionment. Please see Attachment A.
2. Modify Regulation Section 1859.145 to offset previously apportioned amounts from the COS Preliminary Apportionment. Please see Attachment A.
3. For previous apportionments under the SFP, modify Regulation Section 1859.105 to include the receipt of a COS preliminary apportionment for a project as an acceptable substantial progress criteria. Please see Attachment A.

## **2. Preliminary Apportionment Fund Releases (Regulation Section 1859.153):**

### BACKGROUND

The COS program does not provide for a release of state funds from a preliminary apportionment, which serves only as a reservation of funds for future State assistance in the form of grants when the project converts to a final apportionment. Once the preliminary apportionment is converted to a final apportionment pursuant to Section 1859.150, the district may request a release of funds as prescribed in Section 1859.90.

### ISSUE

Some districts maintain they have a great need to utilize separate design and site acquisition funding to advance their projects. It is the districts contention they are not able to apply for COS funding.

The OPSC staff acknowledges the COS regulations do not provide for an early release of preliminary apportionment provisions. Per legal counsel, the statute does not provide the SAB with the authority to make advance fund releases. Staff counsel further opined that this section only authorizes reservations of COS facility account funds, prior to converting to a final apportionment.

Districts have many options available to consider for advancing their projects. They may apply under the SFP and utilize the environmental and financial hardship provisions. Districts, which have or would need to rely on and utilize environmental and financial hardship provisions, are encouraged to apply under the COS if interim financing can be arranged. The COS preliminary apportionments are sufficient collateral and may be used to secure interim financing for the project. Furthermore, the State Treasurers office is examining the feasibility of a more attractive interim financing program for qualified districts.

### RECOMMENDATION

Pursuant to legal counsel opinion, current regulations are appropriate as per statute.

### **3. Conversion of Preliminary Apportionment (Regulation Section 1859.147):**

#### BACKGROUND

The COS program specifies that a preliminary apportionment can be made in advance of full compliance with all of the application requirements and that the final apportionment will be determined when the project has complied with all the criteria for an apportionment. The COS program provides guidance and clarification to districts in this regard and indicates: "When a Preliminary Apportionment is converted to a Final Apportionment, all the following criteria must be met:

- (a) The district must have current New Construction Eligibility sufficient to support at least 75 percent of the pupils the district requested and received the Preliminary Apportionment.
- (b) The Final Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (c) A district seeking to convert a Preliminary Apportionment to a Final Apportionment shall complete and file Form SAB 50-04, which requests funding for at least 75 percent, but not more than 100 percent, of the pupils the district requested and received the Preliminary Apportionment.

It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required by Section 1859.142(c) at the time the application is converted to a Final Apportionment.

If the district is unable to meet the criteria in this Section, the Preliminary Apportionment shall be rescinded pursuant to the provisions of Section 1859.148."

#### ISSUE

Some districts maintain they need assurance that once they qualify for COS preliminary funding for a specific project that they can complete that project even if they no longer have sufficient eligibility to justify the original project. These districts maintain they could potentially build a school, but not receive state funding to support it due to an eligibility loss. In addition, these districts indicate their ability to demonstrate the 75 percent rule may change over the four to five years it takes to build a school.

The issue expressed is not unique to the COS or various other OPSC programs. The risk a district faces from effects of eligibility changes are the same for the COS or SFP programs. When an application is presented to the SAB, it must be supported by current SFP eligibility and conform to the regulation criteria in effect at the time the application is on file with the OPSC. On the other hand, districts do not need to continue to justify source school eligibility when converting a preliminary apportionment to a final apportionment. Regulation Section 1859.147 currently indicates, "It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required in Section 1859.142(c) at the time the application is converted to a Final Apportionment."

#### RECOMMENDATION

Staff maintains current regulations are appropriate to statute.

## ATTACHMENT A

### Section 1859.105. Program Accountability Progress Audit.

- (a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:
  - (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
  - (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
  - (3) All construction activities are at least 50 percent complete.
  - (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.
- (b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:
  - (1) Obtained the final appraisal of the site.
  - (2) Completed all California Environmental Quality Act requirements.
  - (3) Obtained final approval of the site by the CDE.
  - (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.
- (c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:
  - (1) An Approved New Construction or Modernization Adjusted Grant Application; or
  - (2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or
  - (3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1 or an approved Preliminary Apportionment pursuant to Section 1859.145; or
  - (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50-06 to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60-day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

#### Section 1859.142. Preliminary Apportionment Eligibility Criteria.

A district may apply for a Preliminary Apportionment by submittal of Form SAB 50-08 if all of the following criteria are met:

- (a) The district has demonstrated that it has SFP new construction eligibility under Education Code Section 17071.75.
- (b) The project for which the district is requesting funding has not received an apportionment under the LPP, the SFP or other Proposition 1A funds, with the exception of apportionments prior to April 29, 2002 pursuant to Section 1859.81.1(c).
- (c) At least 75 percent of the number of pupils requested on Form SAB 50-08 are Qualifying Pupils from a Source School(s) as determined in Section 1859.143.
- (d) The General Location of a proposed school meets the criteria of Education Code Section 17078.22(a)(3) or (b).

If the proposed school will serve a combination of elementary school pupils and middle school pupils, the General Location of the school for purposes of (d) above shall be based on the highest grade served.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17078.18 and 17078.22, Education Code.

#### Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

(a) The amounts shown below for each pupil included in a Preliminary Application:

(1) \$5,226.82 for each elementary school pupil.

(2) \$5,533.65 for each middle school pupil.

(3) \$7,225.94 for each high school pupil.

(4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.

(c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.

(d) An amount for site development cost determined, at the option of the district, by one of the following:

(1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.

(2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.

(3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.

(e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.

(f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:

(1) The district has requested an increase for multilevel construction pursuant to (b) above.

(2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.

(3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site. (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

- (h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all CSFP Preliminary Applications received no later than March 31, 2003.
- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
- (j) If the district received an apportionment pursuant to Section 1859.81.1(c) an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.  
The amounts shown in (a) shall be adjusted annually in a manner prescribed in Section 1859.71.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.